IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.S. No.: 59 of 2005.

Reserved on: 13.03.2013.

Decided on: 20.03.2013.

Sardar Tara Singh S/o late Sardar Vir Singh, R/o Mohalla Mangwain, Mandi Town, Mandi, Himachal Pradesh.

... Plaintiff.

Versus

Trilok Singh S/o late Shri Vir Singh, Vir Singh & Co. Gun Factory, Mandi Town, Mandi, Himachal Pradesh.

... Defendant.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

For the Plaintiff	:	Mr. G.D. Verma, Senior Advocate with Mr. Ajay Kumar Dhiman, Advocate.
For the Defendant	:	Mr. Bhupender Gupra, Senior Advocate with Mr. Ajeet Jaswal, Advocate.

Justice Dharam Chand Chaudhary, J.:

In this suit, the plaintiff claims the following reliefs:-

i) Decree for partition of immovable property double storeyed pucca factory situated in Khewat No.575, Khatauni No.664, Khasra No.2691/1740, measuring 120-88 Square Meters, Khasra No.1745 measuring 82.56

Square Meters, Kita 2 total measuring 203-44 Square Meters according to the jamabandi for the year 1999-2000, Mauza Mangwain, Tehsil Sadar, Distt. Mandi, H.P.by metes and bounds allotting 17% of share to the plaintiff followed by possession.

ii) Decree for partition of immovable property Gair Mumkin Hotel and orchard situated in Khewat No.155/142, Khatauni No.184/170, Khasrfa No.388, measuring 01-10-00 hectares according to the Jamabandi for the year 2002-2003 pertaining to Mauza Maniyana, Mohal Chadiyara, Tehsil & Distt. Mandi, HP by metes and bounds allotting 17% of share to the plaintiff following by possession.

iii) The defendant be directed to render true accounts with respect to VISCO Gun Factory and VISCO Resort to this Hon'ble Court and from the accounts, the decree be passed, whereby the plaintiff's share to the extent of 17% be given to him from the income earned by the defendant from VISCO Gun Factory, M/s. Vir Singh & Co., Gun Factory and VISCO Resorts at Mandi, Himachal Pradesh.

iv) A decree of permanent injunction in favour of the plaintiff and against the defendant, whereby, restraining the defendant, his

attorney, his agents, employees from selling, alienating, transferring or parting with possession or creating any third party interest with respect to property i.e. VISCOL Gun Factory, M/s. Vir Singh & Co., Gun Factory and VISCO Resorts at Mandi, Himachal Pradesh without the concurrence of the plaintiff.

2. Plaintiff and defendant are real brothers. They were partners of the firm Vir Singh & Co. to the extent of 33% share each with their father late Shri Vir Singh, who had 34% share in the business of the partnership firm. This firm was engaged in manufacturing guns. The firm was dissolved by the father of the parties to the suit on 9.3.1970. The new firm, Vir Singh & Co. came to be constituted with plaintiff, defendant, their mother Smt. Partap Kaur and Nirmal Singh, son of the plaintiff as partners on 4.4.1970. This firm also stands dissolved on 30.1.1976 vide duly registered dissolution deed. The plaintiff allegedly was given whatever due to him in the dissolved firm and after dissolution he ceased to be the partner of the firm Vir Singh & Co. At the time of dissolution of firm in the year 1976, in a family settlement plaintiff and defendant got separate shares in the joint property situate at Mangwain (Mandi) and consequently mutation No.477 to

this effect was attested on 1.5.1980. Not only this, but the plaintiff and defendant by way of another family settlement in the year 1989 partitioned the joint land situate at Mauza Chadiyara, District Mandi. The settlement so arrived at was reduced into writing on 5.5.1989 and mutation No.267 to this effect was attested on 7.6.1989. In that settlement, the earlier settlement of 1976 was also confirmed/reiterated. The parties pursuant to the settlement so arrived at in the year 1976 and thereafter in the year 1989 are owners in possession of their respective shares in the properties situated at Mangwain (Mandi Town) and Mauza Chadiyara (Mandi).

3. Admittedly late Shri Vir Singh, predecessor-in-interest of the parties to the suit had executed a registered 'will' on 23.7.1965 giving thereby his 34% share in the business of the partnership firm to Smt. Partap Kaur, his wife and mother of the plaintiff and defendant in the present suit. On her death, a provision was made to inherit 34% share given to her in equal shares, i.e. 17% share each by the plaintiff and defendant.

4. The grouse of the plaintiff as brought to this Court in the present suit is that on her death in the year 1990, the defendant desired to continue to deal with 17% plaintiff's share available to him by virtue of the registered

'will' because he met with an accident and remained ill for quite long time. He thus allowed the defendant to take care of his 17% share in the business of the partnership firm. Out of the profits earned by the firm from the business of gun manufacturing, the firm acquired land and building and started running Visco Resorts. Since 17% share of the plaintiff in gun factory and Visco Resorts was intact, therefore, on August 12, 2005 he approached the defendant and requested him to render due accounts with regard to the income from the business of gun manufacturing and Visco Resorts. It is on that occasion the defendant for the first time denied 17% share of the plaintiff in the said business with further intimidation that he can do whatever he wants in that business. Hence, this suit.

5. In the written statement besides preliminary submissions, such as the plaint lacks better particulars, plaintiff has no locus standi to file the suit, estoppel, the suit is time barred, bad for want of necessary parties and not valued properly for the purposes of court fee and jurisdiction, the stand taken by the defendant in paras 6 and 11 of preliminary objections reads as follows:-

> "6. That originally late Shri Vir Singh father of the parties started the work of repairing and manufacturing guns at Mandi. He constituted firm Vir Singh and Company which on his death on 9.3.1970

was dissolved. In order to give respect to late Shri Vir Singh another firm under the name and style of Vir Singh and Company was constituted on 4.4.1970, which was dissolved by dissolution deed dated 30.1.1976. The defendant from 1976 to 1986 operated Vir Singh and Company as sole Proprietorship concern of defendant. During this period licence of gun factory was also remained only in the name of the defendant. The defendant and his sons, namely, Jasvinder Singh, Swaran Singh and Lakhvinder Singh in 1986-87/1992 constituted a firm and to give respect to late Sh. Vir Singh named the firm as Vir Singh and Company. In this firm plaintiff is not a partner. In fact this new firm Vir Singh and Company having defendant and his sons as partners has no connection with firm Vir Singh and Company which was dissolved on 9.3.1970 on the death of Vir Singh and another firm Vir Singh and Company dissolved vide dissolution deed dated 30.1.1976. The plaintiff has no right, title and interest in the firm M/s Vir Singh and Company having defendant and his sons as partners. The licence for repairing and manufacturing guns after 1986/1987 is also in favour of defendant and his sons. The other heirs of late Sh. Vir Singh had already given no objection for issuing licence in favour of defendant. The plaintiff vide dissolution deed dated 30.1.1976 had already relinquished his all rights in firm Vir Singh and Company and in its goodwill in consideration of amount mentioned in the dissolution deed, which amount he has already received.

11. That assuming but without conceding, admitting that plaintiff has some case for partition, permanent prohibitory injunction etc. in that case also as submitted in the written statement the defendant is running gun factory and Visco Resort alongwith his sons by way of separate partnerships with the investment made by the defendant and his sons. The plaintiff has no concern in the said business. Therefore, if this Hon'ble Court comes to the conclusion that the plaintiff has a right in the land on which the defendant and his sons are running gun factory and Visco Resort in that situation the land on which gun factory and Visco Resort are being run may not be partitioned and in view of Section 2 of the Partnership Act the defendant is ready to purchase the alleged share of plaintiff from such land on market price for which appropriate direction may kindly be made."

6. In written statement on merits also, he has reiterated the similar stand.

7. Plaintiff has also filed the replication. On the pleadings of the parties, following issues were framed on 23.07.2007:-

1. Whether the plaintiff is a co-owner in the gun factory, in question, to the extent of 1/6th share, as alleged? OPP.

2. Whether the plaintiff is a joint owner with the defendant in the property, other than the gun

factory, described in the plaint. If so, to what extent? OPP.

3. In case issues No.1 and 2 are proved, whether the plaintiff is entitled to seek rendition of accounts from the defendant? OPP.

4. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as asked for? OPP.

5. Whether the gun factory, in question, was a partnership concern, initially among the father of the parties and the parties and after the death of the father of the parties a fresh partnership concern was constituted consisting of the plaintiff, the defendant, their mother and Nirmal Singh, a son of the plaintiff? OPD.

6. If issue No.5 is proved, whether the partnership concern that was re-constituted after the death of the father of the parties was dissolved in the year 1976, as alleged, and there had been a settlement between the parties pursuant to which the plaintiff ceased to have had any concern with the gun factory and also gave up his claim qua the right of succession, if any, to the interest of his mother in the said gun factory? OPD.

7. Whether under the Will of the father of the parties, the mother of the parties was given 1/3rd share both in the gun factory and the rest of the suit property and the mother of the parties was the absolute owner of that 1/3rd share and on her

death the plaintiff has inherited her share alongwith the defendant? OPP.

8. Whether the mother of the parties was given only the right of enjoyment in the gun factory and the suit property during her life time and she did not have otherwise any right, title or interest in the suit property, as alleged? OPP.

9. In case issue No.8 is not proved, whether the mother of the parties executed a Will in respect of her share in the properties in favour of the defendant and as such the plaintiff cannot claim any share in the property on the plea of his having inherited his mother's share? OPD.

10. Whether there had been a family settlement with regard to the property other than the gun factory which was reduced into writing on 5.5.1989 and in terms of that settlement the property other than the gun factory had been divided between the plaintiff and the defendant? OPD.

11. Whether the suit is barred under Section 65 of the Partnership Act? If so, its effect. OPD.

12. Whether the suit is bad for the non-joinder of the necessary parties? If so, its effect. OPD.

13. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.

14. Whether the plaintiff has no locus stnadi to file the suit, as alleged? OPD.

15. Whether the plaint lacks full and material particulars, as alleged? OPD.

16. Relief.

8. The parties when put to trial, have produced the evidence consisting of oral as well as documentary.

9. Shri Pardeep Parmar, PW-1 is the Notary Public, who had attested the deed of dissolution Ex.P-1 (DW-1/A) and Ex.P-2, the affidavit of the plaintiff, receipts Ex.P-3 and Ex.P-4.

10. PW-2 Shri Jagdish Chand is the Patwari of concerned Patwar Circle, who has proved the copy of Jamabandi for the year 1999-2000, Ex.P-2/1. PW-3 Shri Ved Parkash is the Registration Clerk in the office of Sub Registrar, Mandi, who has proved Ex.PW-3/A an extract of page No.69 of Bahi No.3, Vol.I on which the entries qua the 'will' executed by late Shri Vir Singh were made on the date of its registration, i.e. 23rd July, 1965.

11. The plaintiff has himself stepped in the witness box as PW-4 and deposed about the execution of 'will' Ex.PW-3/A, issuance of legal notice to the defendant Ex.PW-4/A and also proved the postal receipt Ex.PW-4/B. He has also proved the application dated 18th February, 1965 made by his father to District Magistrate, Mandi for inclusion of his name and that of defendant in the licence (Ex.D-2) of

gun factory. He has also proved another deed of partition Ex.D-4 and receipt Ex.D-5 whereby he had received a sum of ₹5,500/- from the defendant. He also admits the partition of property having already taken place between his father late Shri Vir Singh and brother, Pritam Singh on 8.5.1962 vide Ex.D-3. He denied his signatures encircled red at points X-1 to X-5 on Ex.P-1 and expressed his inability to tell that the signatures encircled red at points Y-1 to Y-7 on Ex.P-1 are that of his son Nirmal Singh.

12. PW-5 Shri Surjit Singh has also proved the deed of dissolution Ex.P-1 and the receipts Ex.P-2 to P-4. He has also stated that Ex.D-A bears his signature in the capacity of Councillor. PW-6 Shri Lakhvinder Singh, son of the defendant has also been examined. In his cross-examination, he admits his signature on Ex.D-B, Ex.D-C, Ex.D-D and Ex.D-E, Partnership Agreements, encircled red at points A.

13. Smt. Jaswant Kaur, PW-7 is the sister of plaintiff and defendant. Reference to her testimony will be made appropriately hereinafter where required. PW-8 Anup Singh has also admitted his signatures on Ex.D-C, Ex.D-D and Ex.D-F, the Partnership Agreements, encircled red at Point Mark-B.

14. The defendant, on the other hand, has himself stepped in the witness box as DW-1 and examined Shri Mohinder Singh, the attesting witness to the 'will' Ex.DW-2/A.

15. Learned counsel representing the defendant has also tendered in his statement recorded separately the mutations and Jamabandis Ex.DA-1 to DA-11.

16. On completion of record, I have heard learned counsel representing the parties on both sides and also taken into consideration the evidence available on record.

17. For the reasons to be recorded hereinafter my findings on the issues framed in this suit are as under:-

Issue No.1:	No.
Issue No.2:	No.
Issue No.3:	No.
Issue No.4:	No.
Issue No.5:	Yes.
Issue No.6:	Yes.
Issue No.7:	No.
Issue No.8:	No.
Issue No.9:	Yes.
Issue No.10:	Yes.
Issue No.11:	Not pressed.
Issue No.12:	redundant.

Issue No.13: No.

Issue No.14: No.

Issue No.15: No.

Relief: Suit dismissed as per operative portion of the judgment.

Reasons for findings:

Issues No.1, 2, 7 and 10:

18. All these issues being interlinked and interconnected can conveniently be decided together in order to avoid repetition of evidence and findings.

19. The suit property is situated in two revenue Mohals, i.e. Mangwain and Chadiyara in district Mandi. The suit property situated in Mohal Mangwain (Mandi Town) as per plaint is entered in Khewat No.575, Khatauni No.664, Khasra No.2691/1740 measuring 120-88 square meters and Khasra No.1745 measuring 82.56 square meters, total measuring 203.44 square meters as per entries in the Jamabandi for the year 1999-2000 (Ex.P-2/A). The suit property situated in Mohal Chadiyara, Tehsil and District Mandi bears Khewat No.155/142, Khatauni No.184/170, Khasra No.388 measuring 01-10-00 hectares allegedly as per entries in the Jamabandi for the year 2002-03.

20. Admittedly, on partition of the property, the suit land fell in the share of defendant. The plaintiff claims his

share therein and also in the business of gun manufacturing and Visco resorts to the extent of 17%, being run in the factory and resort constructed over portion thereof by virtue of the last 'will' Ex.PW-3/A of late Shri Vir Singh, their predecessor-in-interest on the death of his mother, Smt. Partap Kaur. The defendant, allegedly denied his right to inherit the suit property to the extent of 17%, hence this suit for partition thereof by metes and bounds and also the rendition of accounts and release of his share to the extent of 17% in respect of the business being run under the name and style of Visco Gun Factory and Visco Resort therein. I am afraid that after dissolution of partnership firm M/s Vir Singh and Company on and with effect from 31st day of January, 1976 vide registered deed of dissolution Ex.DW1-A/P-1, the plaintiff is entitled to claim any such relief.

21. There is no denial to the fact that plaintiff and defendant with their father Vir Singh had formed partnership firm under the name and style of M/s. Vir Singh and Company, Mandi, District Mandi. This firm started running the business of repair and manufacturing of guns having registered trade mark "Visco". There is again no controversy so as to the shares of plaintiff; defendant and their deceased father in equal, i.e. 33%, 33% and 34% each

in this business. The father of parties to the suit passed away on 9th March, 1970. On the death of Vir Singh, the plaintiff, defendant with one of the sons of plaintiff formed another firm on 4.4.1970 under the name and style of M/s Vir Singh and Company as a mark of respect to their deceased father. It is this firm, which has been dissolved vide deed of dissolution Ex.DW-1/A. There is again no controversy so as to the father of the parties during his life time executed a registered 'will' Ex.PW-3/A thereby bequeathing his 34% share in the business of gun factory being run by the firm to his wife, Smt. Partap Kaur till her death and after her death this 34% share in this business had to devolve upon the plaintiff and defendant to the extent of 17% each. The plaintiff and his son, Nirmal Singh, however, had relinquished their respective shares in the partnership firm business on receipt of a sum of ₹2,01,000/- in lump-sum in lieu thereof from the defendant and Smt. Partap Kaur. Besides, the parties to the suit, Smt. Partap Kaur, who as per the last 'will' of her late husband was share holder in the business of partnership firm to the extent of 34%, was a party of 3rd part to the dissolution deed Ex.DW-1/A whereas the son of plaintiff Shri Nirmal Singh a party of the 4th part. This document itself speaks in plenty qua the plaintiff and his son Nirmal Singh

relinquished their respective shares in the business of gun manufacturing being run by the firm M/s Vir Singh and Company and as such on and with effect from 31st day of January, 1976 ceased to be the share holders in this business in any manner whatsoever. The deed of dissolution Ex.DW-1/A is duly proved from the own testimony of defendant while in the witness box as DW-1. Not only this, but the plaintiff has also not disputed the execution of this document, however, he only claims 17% of his share which allegedly had to come to him on the death of his mother, Smt. Partap Kaur in accordance with the recitals in the 'will' Ex.PW-3/A. This Court has already discarded such claim of the plaintiff for the reason that had he not relinquished 17% share; he could have reserved his right to get the same on the death of his mother, Smt. Partap Kaur. In the document Ex.DW-1/A there finds nothing recorded to this effect. The categorical/unequivocal recital in this document rather is that he and his son also had agreed to relinquish their shares in the business of gun manufacturing on receipt of a sum of ₹2,01,000/- in lump-sum while counting for the funds of the firm, value of its assets and also liabilities as well as value of good-will of partnership firm on account of its product. Though the plaintiff while in the witness box

expressed his inability to identify his signatures on this document, however, the fact remains that he has not denied the same. On the other hand, the defendant has categorically stated that this document bears the signatures of plaintiff and his son Nirmal Singh. The plaintiff has confirmed the execution of deed of dissolution, Ex.DW-1/A in his affidavit, Ex.P-2 which is duly proved from the testimony of the Notary Public, Mandi, Shri Pardeep Parmar, PW-1. The joint affidavit of plaintiff and his son Nirmal Singh Ex.D-A produced before the Income Tax Officer to seek exemption from payment of tax on account of the business of gun manufacturing also reveals that after 31.1.1976 (date of dissolution deed, Ex.DW-1/A), the responsibility to pay the income tax was that of Tarlok Singh, the defendant. As regards the receipt of ₹2,01,000/-, the plaintiff and his son Nirmal Singh had executed receipts Exts.P-3 and P-4 duly notarized by PW-1 Shri Pardeep Parmar. There hardly remains any share of the plaintiff or his son in the gun manufacturing business of the firm M/s Vir Singh and Company which as a matter of fact on and after 31.1.1976, constituted by the defendant with his sons namely, Jasvinder Singh, Swaran Singh and Lakhvinder Singh thereafter from time to time as is evident from the partnership agreements Ex.D-B to D-F.

22. If coming to the entries in revenue record over which the building of gun factory is concerned, the same as per the copy of Bandobast Jadid Ex.D-A-5, is existing over the land bearing khasra No.1745 measuring 82.56 square meters. Note No.2 in the remarks column of this document shows that vide mutation No.477, this khasra No. has been mutated on 31.1.1976 itself, the day when dissolution deed Ex.DW-1/A was executed between the parties, in the name of the defendant. Not only this, but the defendant as per this document has even been shown in possession of the gun factory. Similar entries qua khasra No.1745 over which the gun factory has been constructed, find mention in Jamabandis for the years 1979-80, Ex.D-6, 1984-85 Ex.D-7, 1989-90 Ex.D-8, 1994-95 Ex.D-9, Ex.D-10 and for the year 1999-2000 Ex.P-2/A. Such long standing entries in the revenue record make it crystal clear that defendant is exclusive owner in possession of the land over which the gun factory has been constructed and also other property situated in Mohal Mangwain (Mandi Town) having fallen in his share. Plaintiff has been shown in separate possession of his share in the property situate in this Mohal Mangwain (Mandi Town), as is apparent from the entry in the Jamabandi Ex.P-2/A. He has not been shown either in possession of the land over which the factory has been

constructed or that of the factory and rightly so being ceased to be in the business of gun manufacturing after dissolution of the partnership firm to which he alongwith his son was one of the partners, vide dissolution deed Ex.DW-1/A. Plaintiff himself admits that the gun manufacturing licence is neither in his name nor in the name of his son or in their joint names. He while in the witness box even admitted the family partition having already taken place between him and the defendant and they are in separate possession of their respective shares. PW-7, Smt. Jaswant Kaur is their sister, who tells us that after separation from the business, plaintiff received money in lieu thereof and is no more in the gun manufacturing business. Plaintiff is doing his business separately. Thus, overwhelming oral as well as documentary evidence available on record leads to the only conclusion that the plaintiff is left with no right, title and interest in the business of gun manufacturing being run by the firm M/s Vir Singh and Company under the trade mark “Visco” in new firm constituted by the defendant with his three sons in Mauza Mangwain (Mandi Town) on and after 31st January, 1976 with the dissolution of the earlier firm, M/s Vir Singh and Company of which he was one of the partners. The relief to

this effect in the plaint has been sought with malafide intention to grab money from the defendant.

23. Similarly, the plaintiff is not even left with any right, title or interest in the property at Mohal Chadiyara, Tehsil and District Mandi on and after partition thereof vide deed of partition Ex.D-4 dated 5.5.1989. In terms of this private partition vide Ex.D-4, mutation No.267, copy of which is Ex.D-A/3 stands attested on 7.6.1989 and thereby while land measuring 5-6-7 bighas out of the total land has been mutated in the name of plaintiff, in the name of defendant only land measuring 3-6-14 bighas has been mutated. It is apparent from the entries to this effect which find mention in remarks column of Jamabandi Ex.D-A/2 for the year 1987-88. Not only this, but the plaintiff even received a sum of 5,500/- from the defendant to remove one tin shed he had constructed over a portion of land bearing khasra No.389. It is so apparent from the receipt Ex.D-5.

24. If coming to the subsequent entries in the revenue record, Jamabandi for the year 1997-98 Ex.D-A/4 reveals that over the land which fell in the share of defendant he had raised an orchard and also constructed hotel (Resort). Thus the documentary evidence hereinabove amply demonstrates that the land belonging to the parties

at Mohal Chadiyara stands already partitioned and the resort as well as the land beneath it is in the ownership and possession of the defendant. The plaintiff is not at all justified in claiming that Visco resort has been constructed by the defendant over the joint land and out of the funds generated from the business of gun manufacturing and as such, he is entitled to 17% share in this property also. As a matter of fact, whatever was due to him in this property stands given as per the settlement arrived at between them vide family partition deed Ex.D-4. Visco Resort belongs to the defendant and the plaintiff has nothing to do therein. PW-6, Lakhvinder Singh, examined by the plaintiff states that the plaintiff has no share in the Visco Resort. PW-7, Smt. Jaswant Kaur also tells us that the Visco Resort belongs to Shri Jasvinder Singh, who is son of the defendant. Otherwise also, Smt. Partap Kaur, his mother vide registered 'will' Ex.DW-2/A has bequeathed her entire property moveable or immoveable in favour of the defendant. There is no challenge to the 'will' from the side of plaintiff. The plaintiff has thus laid false claim to the extent of 17% in the business of the resort on the basis of last 'will' of his father late Vir Singh which condition in the 'will' as a matter of fact on dissolution of the partnership firm on and with effect from 31.1.1976 ceased to exist as

the plaintiff, his son Nirmal Singh settled all their accounts in the business of gun manufacturing being run by this firm, namely, Vir Singh and Company, as is apparent from the deed of dissolution Ex.DW-1/A.

25. In view of the above discussion, the parties are not joint owners in possession of the suit land as the same stands partitioned and they are in separate possession thereof to the extent of their respective shares. The plaintiff is not also joint owner in the gun manufacturing factory. He is also not entitled to 17% share in the business of gun manufacturing on and with effect from 31.1.1976.

26. The mother of the parties by virtue of 'Will' Ex.PW-3/A no doubt had 1/3rd share, i.e. 34% in the business of the partnership firm and the plaintiff as per the 'Will' had to inherit the same in equal share i.e. to the extent of 17% on her death, but well before that, he relinquished his share in the business on receipt of a sum of ₹2,01,000/- in lump-sum and plaintiff with no right, title or interest in the said business. Consequently, issues No.1, 2 and 7 are answered against the plaintiff and issue No.10 in favour of the defendant.

Issue No.3:

27. In view of issues No.1 and 2 having been decided against the plaintiff, he is not entitled to the decree of

rendition of accounts against the defendant. This issue is accordingly answered against the plaintiff.

Issue No.4:

28. In view of the findings recorded on issues No.1, 2, 7 and 10, supra, that the plaintiff has no right, title or interest either in Visco Gun Factory or in Visco Resort, the decree of permanent prohibitory injunction, as sought, cannot be granted in favour of the plaintiff and as such, this issue is also answered against him.

Issues No.5 and 6:

29. The onus to prove these issues is on the defendant. There is no dispute that the business of gun manufacturing was being run by M/s Vir Singh and Company of which initially, the plaintiff was one of the partners alongwith his brother, defendant and Pritam Singh. Admittedly, Pritam Singh got himself separated from the business vide family partition Ex.D-3 executed on 8.5.1965. Thereafter Shri Vir Singh, father of the parties to this suit continued the business with other two partners, viz; the plaintiff and the defendant. After his death on 9.3.1970, the parties constituted a new partnership firm of which besides their mother Smt. Partap Kaur, the other partner was the son of plaintiff, Shri Nirmal Singh. As noticed, supra, this partnership firm came to be dissolved vide dissolution deed

Ex.DW-1/A. As per the findings recorded while answering issues No.1, 2, 7 and 10, supra, it is held that on dissolution of the partnership firm, the plaintiff ceased to be one of the partners in the business of gun manufacturing as the plaintiff and his son, Nirmal Singh both had received a sum of ₹2,01,000/- towards full and final settlement of their claim in this business. Therefore, keeping in view the pleadings of the parties and the evidence already discussed, it is held that initially the gun manufacturing business was being run by M/s Vir Singh and Company of which the plaintiff was one of the partners. The partnership firm stands dissolved on and with effect from 31.1.1976 and he as well as his son Nirmal Singh relinquished their right, title and interest in the business of gun manufacturing including 17% share of his father to which he was entitled on the death of his mother Smt. Partap Kaur on receipt of a sum of ₹2,01,000/- in lump-sum towards the settlement of their claims in the said business. Both these issues are accordingly answered in favour of the defendants.

Issues No.8 & 9:

30. Onus to prove these issues lies on the plaintiff. He only submits that he was entitled to get back 17% of his share in the business of gun manufacturing on the death of his mother Smt. Partap Kaur. As a matter of fact, this is the

only grouse of the plaintiff in the present suit. He, however, has miserably failed to discharge the onus to prove otherwise that on dissolution of the firm M/s Vir Singh and Company vide deed of dissolution Ex.DW-1/A he had reserved his right to get back 17% share in the business on account of death of his mother, Smt. Partap Kaur. He rather relinquished his all rights, title and interest in the said business on receipt of a sum of ₹2,01,000/- in lump-sum towards full and final settlement of his claim. True it is that late Shri Vir Singh had bequeathed 34% of his share in the gun manufacturing business in favour of his wife Smt. Partap Kaur during her lift time, however, the plaintiff, as is apparent from his acts, deed and conduct has himself abandoned the same for consideration and not reserved his right to get 17% share in the business back on the death of his mother, he cannot be allowed to turn around and set up a false plea that he is still entitled to his share in this business to the extent of 17% and that the defendant has denied the same.

31. There is no rebuttal to the defendant's case that his mother became absolute owner of the property with her during her life time and she had rightly bequeathed the same to the defendant vide 'will' Ex.DW-2/A. The authenticity and validity of the 'will' has also not been

questioned by the plaintiff. The 'will' Ex.DW-2/A is thus duly proved from the testimony of DW-2 Mohinder Singh, one of the attesting witnesses thereto as no suggestion that the testatrix Smt. Partap Kaur has not executed the same, has been given to this witness. The 'will' Ex.DW-2/A thus stands duly proved on record. The defendant is entitled to inherit the entire moveable and immoveable property belonging to her being a legal and valid document.

32. As regards his claim in Visco Resort, the same again is not only false, but also vexatious for the reason that the Visco Resort as per ample evidence available on record has been constructed by the defendant over the land belonging to him in Mohal Chadiyara, Tehsil and District Mandi. Accordingly, in view of the above discussion issue No.8 is answered in negative, i.e. against the plaintiff, whereas, issue No.9 in favour of the defendant.

Issue No.11:

33. On behalf of the defendant, this issue was not pressed during the course of arguments. The same is thus decided accordingly as not pressed.

Issue No.12:

34. The onus to prove this issue was also on the defendant. Nothing has been brought to the notice of this Court as to how the suit is bad for non-joinder of necessary

parties. Learned counsel representing the defendant rather has submitted that in view of the statement of Smt. Jaswant Kaur, their sister who is examined as PW-7, this issue has become redundant and the same is answered accordingly.

Issues No.13, 14 & 15:

35. All these issues are though legal in nature, however, nothing has been brought to the notice of this Court during the course of arguments as to how the suit is not valued properly for the purposes of court fee and jurisdiction and how the plaint lacks full and material particulars or how the plaintiff has no locus standi to file the suit. Learned counsel has rather conceded the objection to this effect raised in the written statement and not pressed any findings thereon. Accordingly, all these issues are decided against the defendant being not pressed.

Relief:

36. In view of the findings on all the issues hereinabove, this suit fails and the same is accordingly dismissed, however, without any costs. Pending applications, if any, shall also stand disposed of. Decree sheet be prepared accordingly.

March 20, 2013. (Justice Dharam Chand Chaudhary),
(sck) Judge.